IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4330 OF 2004

Vinayak Himmatial Thakkar ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri Jayesh B. Kocheta for Applicant.
Shri S. R. Shinde, APP for Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : 18.10.2004

PC :-

. Heard the learned counsel for the parties. . In my opinion, the learned Magistrate has rigtly observed that he has no jurisdiction to grant bail as the punishment provided in respect of the alleged offence is upto life imprisonment. Counsel for the Applicant placed reliance on the dictum of the Apex Court in **(2001) 4 Supreme Court Cases 280, in the case** of **Pralhad Singh Bhati vs. NCT, Delhi,** to contend that the view taken by the Magistrate is improper. To my mind, the submission canvassed on behalf of the Applicant is mis-reading the judgment of the Apex Court, referred to above. The view taken by the Magistrate is supported by the observations made in para -5 of the said decision of the Supreme Court in

Bhati's case (supra). The Apex Court has observed that only on conditions specified by the provisions under section 437, the Magistrate would be competent to grant bail in respect of an offence which is punishable with imprisonment for life and not otherwise. In other words, there is bar for granting bail by the Magistrate in respect of the offence punishable with imprisonment for life. I had occasion to examine this contention, which has been dealt with in the case of **Virendra Singh A Chandok vs. The State of Maharashtra & Ors.,** in Criminal Application No.3375/2004 decided on 28.09.2004.

. The learned APP submits that in so far as merits of the bail application is concerned, the Appilcant has not approached the sessions court, which was the court of competent jurisdiction to consider the bail application of the applicant. There is substance in this objection. The applicant ought to have exhausted the remedy before the sessions court. To get over this position, the learned counsel for the Applicant submits that he has preferred to approach this court as the applicant had approched this court on earlier occasion when his application was disposed of on 7th September, 2004. This submission of the

Applicant overlooks the fact that the applicant on that occasion had approached this court before filing of the chargesheet. The order dated 7.9.2004 clearly records that the rejection of that application will not come in the way of the applicant to prefer fresh application after filing of the chargesheet, which in turn will have to be decided on its own merits in accordance with the law. The observations by this court in the said order makes it clear that the applicant had approached this court before filing of the chargesheet.

. The learned counsel for the applicant then submits that the co-accused have already been released on bail by the sessions court. That contention is available to the applicant if an applciation for that purpose is moved before the Sessions Court. The counsel for the applicant prays that the applicant be permitted to withdraw this application, so that he can file a fresh application before the sessions court. In these peculiar facts and circumstances of the case, this application is allowed to be withdrawn with liberty to file a fresh bail application before the sessions court, which will be considered on its own merits in accordance with the law. Hence, this

applciation is dismissed as withdrawn in the above terms.

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